IN THE

SUPREME COURT OF THE UNITED STATES

WILLIAM R. HALL,	)	Review of the
	)	Appellate Court
Petitioner-Defendant,	)	of Illinois, Fourth
	)	District
vs.	)	
	)	No. [redacted]
PEOPLE OF THE	)	
STATE OF ILLINOIS,	)	79-320
	)	
Respondent-Plaintiff.	)	

PETITION FOR WRIT OF CERTIORARI

Respectfully submitted by:

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JURISDICTIONAL STATEMENT

By this Petition, Petitioner seeks review of a decision by the Illinois Appellate Court, Fourth District, filed on the 4th day of January, 1979 (appended hereto as Exhibit A), affirming the judgment of conviction of the Circuit Court of Macon County entered on December 16, 1975. This affirmance by the Appellate Court was the second consideration by that court of this cause and was pursuant to an order of this court granting certiorari in this cause, vacating the prior Appellate Court judgment and remanding said cause to the Appellate Court "...for further consideration in light of [the decision of this court in] Franks v. Delaware, 438 U.S. 154 (1978)..." 98 S.Ct. 2674, 57 L.Ed. 2d 667. The prior order of this court is appended hereto as

Exhibit B, Hall v. Illinois, 438 U.S. 912, 57 L.Ed. 2d 1157, 98 S. Ct. 3138, and the First Appellate Court opinion is appended hereto as Exhibit C.

Because the Supreme Court of Illinois denied Petitioner's request for Leave to Appeal to that court on May 31, 1979, this court has jurisdiction to review by Writ of Certiorari according to Title 28, Section 1257(3) of the United States Code, which section permits final judgments entered in State Court by the highest Court in which the decision could be had "...where any title, right, privilege or immunity is specially set up or claimed under the Constitution...". The two previous orders by the Illinois Supreme Court are appended hereto as Exhibits D and E.

QUESTIONS PRESENTED FOR REVIEW

1. Whether the use of a fictitious name upon the Complaint for Search Warrant in the instant case rendered the Search Warrant void as violative of the Fourth and Fourteenth Amendments to the United States Constitution.

2. Whether the instant case should be remanded to the trial court to give the defendant an opportunity to challenge the Search Warrant as provided in Franks v. Delaware.

CONSTITUTIONAL PROVISIONS INVOLVED

U.S.C.A. Const. Amend. 4. The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

U.S.C.A. Const. Amend. 14, Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or

property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

POINTS AND AUTHORITIES

MERITS OF PETITIONER'S CLAIM

I

THE USE OF A FICTITIOUS NAME UPON THE COMPLAINT FOR SEARCH WARRANT IN THE INSTANT CASE RENDERED THE SEARCH WARRANT VOID AS VIOLATIVE OF THE FOURTH AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION.

A.

The logical implications of Franks v. Delaware precludes concealing the identity of the affiant.

Franks v. Delaware, 438 U.S. 154 (1978), 98 S. Ct. 2674, 57 L.Ed. 2d 667

B.

Statutory and case law other than Franks v. Delaware also prohibits hiding the identity of the affiant.

U.S.C.A. Const. Amend. 4

United States ex rel. Pugh v. Pate (1968), 401 F 2d 6

King v. US, 4 Cir 282 F 2d 398 (1960)

C.

"John Doe" warrants are void because they restrict the magistrate's ability to judge the credibility of the affiant.

Aguilar v. United States, 378 U.S. 109, 84 S. Ct. 1509, 12 L. Ed. 2d 723 (1964)

Franks v. Delaware, 438 U.S. 154 (1978), 98 S. Ct. 2674, 57 L.Ed. 2d 667

II

THE APPELLATE COURT SHOULD HAVE REMANDED THE INSTANT CASE TO GIVE THE DEFENDANT AN OPPORTUNITY TO CHALLENGE THE SEARCH WARRANT AS PROVIDED IN FRANKS V. DELAWARE.

Franks v. Delaware, 438 U.S. 154 (1978), 98 S. Ct. 2674, 57 L.Ed. 2d 667

NECESSITY OF CERTIORARI

I

(1) Certiorari is necessary to resolve the conflict between the decisions of the Illinois Supreme Court and the United States Court of Appeals.

People v. Stansberry (1971), 47 Ill. 2d 541, 268 N.E. 2d 431, cert. denied, 404 U.S. 873, 92 S. Ct. 121, 30 L.Ed. 2d 116

King v. US, 4 Cir 282 F 2d 398 (1960)

United States ex rel. Pugh v. Pate (1968), 401 F 2d 6

(2) Certiorari represents the only way this defendant can secure the rights guaranteed him by the United States Constitution.

People v. Stansberry (1971), 47 Ill. 2d 541, 268 N.E. 2d 431, cert. denied, 404 U.S. 873, 92 S. Ct. 121, 30 L.Ed. 2d 116

Stone v. Powell, 96 S. Ct. 3037 (1976)

II

(1) Certiorari is necessary to reverse the Illinois Appellate Court's unwarranted retroactive application of Franks v. Delaware.

Linkletter v. Walker, 381 U.S. 618 (1965)

Stovall v. Denno, 388 U.S. 293, 18 L.Ed. 2d 1199, 87 S. Ct. 1967 (1967)

Desist v. United States, 394 U.S. 244, 89 S. Ct. 1030, 22 L.Ed. 2d 248 (1969)

Williams v. United States, 401 U.S. 646, 91 S. Ct. 1148, 28 L.Ed. 2d 388 (1971)

Franks v. Delaware, 438 U.S. 154 (1978), 98 S. Ct. 2674, 57 L.Ed. 2d 667

(2) Certiorari is needed to either correct the Appellate Court's interpretation of the prior mandate of this court or to correct the misapplication of Franks v. Delaware.

Franks v. Delaware, 438 U.S. 154 (1978) 98 S. Ct. 2674, 57 L.Ed. 2d 667

(3) Certiorari would serve to correct the Appellate Court's unjustified interpretation of Rule 23 (1) (c) of 28 U.S.C.A.

U.S.C.A., Ch. 28, Rule 23 (1) (c)

STATEMENT OF FACTS

On October 27, 1975, a Complaint for Search Warrant was executed by an unknown person namely, "John Doe", which contained two different "Counts" therein for two separate residences located at 731 West Wood Street in Decatur, Illinois, and 729 West Wood Street in Decatur, Illinois (R5).

The first "Count", involving 731 West Wood Street, and the alleged occupant thereof, Mark Erbes, read as follows:

> "I, John Doe, state that within the past seven (7) days I have been inside the apartment located at 731 West Wood Street, Decatur, Macon County, Illinois, on two different occasions and on each occasion I did observe a substance in the premises described to me by Mark Erbes, occupant of said premises, as being cannabis, commonly known as marijuana. Also within the past Seven (7) days while inside these premises, occupied by Mark Erbes, I have

observed Mark Erbes sell a quantity of this substance to a third unknown person. Your complainant states that he has seen and smoked cannabis in the past and the substance that Mark Erbes possesses in his apartment and the substance he sold in your complainant's presence does appear to be cannabis."

The second "Count", involving 729 West Wood Street, and the alleged occupant thereof, David Weller, read as follows:

"Your complainant, John Doe, states that within the past seven (7) days he has been inside the apartment located at 729 West Wood Street, Decatur, Macon County, Illinois, on two different occasions and on each occasion he did observe a substance in the premises described to him by David Weller, occupant of said premises, as being cannabis, commonly known as marijuana. This substance also appeared to your complainant as cannabis. Based on the foregoing, your complainant believes that the above named

substance will be found in the above described premises."

From the second aforesaid "Count", Associate Circuit Judge, Jerry L. Patton, issued a Warrant on October 27, 1975, to search the premises of 729 West Wood Street in Decatur, Illinois, and the person of David Weller, directing as things to be seized: "An unknown quantity of Cannabis, Sativa L., commonly known as marijuana" (R5).

The search was executed on October 28, 1975, and the proceeds thereof listed on an inventory, showing, inter alia, a quantity of cannabis and seven red capsules were seized (R9). Mark Erbes, Robert Schollenbruch and the Defendant were taken into custody, charged with "Unlawful Possession of Cannabis" in violation of Chapter 56 1/2, Section 704 (d), ILL. REV.

STAT. 1973 (R10), and later, "Unlawful Possession of a Controlled Substance", in violation of Chapter 56 1/2, Section 1402 (b), ILL. REV. STAT. 1973, in that they had in their possession a quantity of a controlled substance, to wit: Ethclorvynol (R27).

The charges against Mark Erbes and Robert Schollenbruch were dismissed at a Preliminary Hearing, in that the People failed to sustain their burden of proof (R2), after which Defendant was separately charged with "Unlawful Possession of Cannabis" (R10), and "Unlawful Possession of a Controlled Substance" (R29) on November 21, 1975.

Defendant's counsel filed several Motions:

1. Motion for Disclosure, wherein Defendant requested that the Plaintiff inform him of the actual person signing the above described search warrant.

2. Motion to Dismiss, wherein Defendant claimed he was entitled to a dismissal based on the Plaintiff's failure to comply with the above Motion for Disclosure.

3. Motion to Suppress, wherein Defendant claimed the above search warrant was not based upon a Complaint setting probable cause and that the search and seizure carried out by the Decatur Police was outside the scope of said search warrant.

4. Supplement to Motion to Suppress, wherein Defendant claimed said search warrant was based upon various information as to the person to be served and his residence in that certain search warrant indicating that David Weller resided at 729 West Wood Street, Decatur, Illinois, but that the City of Decatur Police Department was aware that said David Weller's residence was 47 Oak Ridge Drive, Decatur, on the date in question.

5. Additional Supplement to Motion to Suppress, wherein Defendant contended the above search warrant was defective in that the person executing the Complaint upon which said search warrant was based used a fictitious name in violation of the Fourth and Fourteenth Amendments of the United States Constitution.

The above Motions were heard by the Court and denied on December 2, 1975, as per the written

Order attached hereto as Exhibit F.

The People of the State of Illinois and the Defendant entered into a Stipulation of Facts wherein it was conceded, inter alia, that three bags of marijuana, three pipes and seven red capsules were seized in the apartment at 729 West Wood Street pursuant to a search warrant on October 28, 1975, but the Defendant maintained his objection thereto and entered his plea of "not guilty". A finding and judgment of guilty as to both charges was entered on December 16, 1975, by Judge Rodney A. Scott.

On the 31st day of December, 1975, Defendant filed Post-Trial Motions requesting a new trial based upon the Court's erroneous rulings upon the Motions presented. Such Motions were denied on January 8, 1976. On January 8, 1976, Defendant's application for

probation was also denied and he was sentenced to a two to ten year term in the Illinois State Penitentiary.

Defendant's counsel filed a Notice of Appeal on January 8, 1976. Upon appeal, the Defendant sought a reversal based upon the following issues:

> The trial Court erroneously denied Defendant's Motions to Suppress by finding it had no jurisdiction to review the question of probable cause as to facts set forth on the face of the Complaint for search warrant.
>
> The Complaint requesting a search warrant for the premises of 729 West Wood Street in Decatur, Illinois, did not establish probable cause.
>
> The seizure of a "Controlled Substance" although contraband, was inadmissible as evidence, in that the said "Controlled Substance" was not described in the warrant as one of the things to be seized.

> The use of a fictitious name upon the Complaint for search warrant in the instant case rendered the Complaint void.
>
> The trial Court committed reversible error and denied Defendant due process of law by refusing to disclose the identity of the "John Doe" informant in violation of the 14th Amendment to the United States Constitution.

During the pendency of the Defendant's appeal, he was released on an Appeal Bond set by the Circuit Court of Macon County. On the 3rd day of February, 1977, the Appeal Court affirmed the trial Court's judgment.

On the 25th day of February, 1977, Defendant's attorney submitted to the Appellate Court an Affidavit of Intent to seek review by the Illinois Supreme Court. As a result of said Affidavit, the mandate of the Appellate Court was stayed pending Appellant's Petition for Leave to Appeal to the Supreme Court, which

Petition was filed on March 30, 1977. Within said Petition, the reasons set forth were the same as set forth by Defendant within Defendant's Appellate Brief. This Petition was denied on May 26, 1977. On June 3rd, Defendant filed a Petition in the Appellate Court to stay the mandate of that Court, which Petition was allowed on June 9, 1977, pending this court's consideration of the defendant's first Petition for Writ of Certiorari (See Exhibit G). On July 3, 1978, this court granted this Petition vacating the judgment and remanding the case to the Appellate Court of Illinois for further consideration in light of [the decision in] Franks v. Delaware, 438 U.S. 154 (1978). Defendant's request for Certiorari in Hall v. Illinois, 438 U.S. 912, was based upon the following arguments:

> The use of a fictitious name upon the Complaint for Search Warrant in the instant case rendered the Warrant void.

> The Complaint requesting a Search Warrant for the premises of 729 West Wood Street in Decatur, Illinois, did not establish probable cause.

Upon reconsideration, the Defendant presented the following two arguments:

> The Constitution of the United States, as interpreted by Franks v. Delaware, prohibits "John Doe" warrants.
>
> Even if the [Appellate Court] holds that Search Warrants supported by "John Doe" affidavits are not per se void, the present case should not be remanded to the trial court for further proceedings.

After the submission of briefs by counsel and oral arguments, the Appellate Court again affirmed the Defendant's conviction ruling that the purpose of this court's vacation and remand was "...to consider whether under Franks an evidentiary hearing should have been conducted [in the present case]..." and that said remand was not necessary because the facts in the

present case did not require affording the Defendant an opportunity to challenge the Search Warrant as provided in Franks v. Delaware. Defendant's request for Leave to Appeal to the Illinois Supreme Court, denied on May 31, 1979, attempted to challenge both above rulings. On June 14, 1979, the Appellate Court again granted Defendant's Petition to Stay the Mandate of that court pending this court's consideration of this Petition (See Exhibit H).

ARGUMENT

MERITS OF PETITIONER'S CLAIM

I

THE USE OF A FICTITIOUS NAME UPON THE COMPLAINT FOR SEARCH WARRANT IN THE INSTANT CASE RENDERED THE SEARCH WARRANT VOID AS VIOLATIVE OF THE FOURTH AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION.

As explained above, this court granted the Defendant's Petition for Writ of Certiorari vacating the prior judgment by the Appellate Court and remanding this cause to the Appellate Court for further consideration in light of Franks v. Delaware, 438 U.S. 154 (1978). The Appellate Court interpreted the Supreme Court Order as follows:

> "We...consider our mandate to be to consider whether under

> Franks an evidentiary hearing should have been conducted to determine whether knowingly, intentionally or recklessly false statements were made in the complaint on allegations necessary to support the finding of probable cause made by the issuing judge." p. 6

It is the Defendant's position that this was not the intent of this court's Order. Rather than remanding to determine whether this defendant might be entitled to a hearing as provided in Franks v. Delaware, 438 U.S. 154 (1978), the Defendant believes the intent of the Order was to give the Appellate Court an opportunity to reconsider the issue of the validity of "John Doe" warrants in light of the logical implications of its decision in Franks v. Delaware, supra.

In this section, the Defendant will first set out these "logical implications" of Franks v. Delaware. Secondly, other statutory and case law in support of the above stated position will be set forth.

In Franks v. Delaware, 438 U.S.154 (1978), the Court held that a defendant has a constitutional right to attack the validity of a search warrant by showing that the affidavit on which the search warrant was based was deliberately false or was made with reckless disregard for the truth of the allegations contained therein.

This right is exercised by making a substantial preliminary showing that a false statement knowingly and intentionally, or with reckless disregard for the truth, was included by the affiant in the warrant affidavit and that the allegedly false statement was necessary to the finding of probable cause. If such a showing is made, the Fourth Amendment, as incorporated in the Fourteenth Amendment, requires that a hearing be held at the defendant's request.

To mandate an evidentiary hearing, the challenger's attack must be more than conclusory

and must be supported by more than a mere desire to cross-examine. The allegation of deliberate falsehood or of reckless disregard must point specifically with supporting reasons the portion of the warrant affidavit that is claimed to be false. It must also be accompanied by an offer of proof, including affidavits, or sworn, or otherwise reliable statements of witnesses, or a satisfactory explanation of their absence.

From the above requirements, it is readily apparent that a defendant must know the identity of the affiant in order to exercise these rights. It would be impossible to demonstrate to the court the mental state of "reckless disregard" or "deliberate falsehood" without knowing the identity of the person who was making the false statements. In addition to

this most telling implication, three other matters are readily apparent from the Franks opinion. First, permitting the State to hide the identity of the affiant would serve no useful purpose. For cases in which the identity of the affiant needs to be hidden in order to provide for his safety, there is a well recognized and well used alternative. Instead of having the affiant make out the affidavit, the affidavit can be made out by another individual, in most cases a police officer and the police officer's affidavit can include the name of the person giving the information as an unnamed informant. This often used device is specifically recognized in the Franks opinion. In Franks, the Court pointed out that they were "...faced today with [only] the question of the integrity of the affiant's representations as to his own activities..." and, therefore, they declined to "...predetermine, the difficult question whether a reviewing court

must ever require the revelation of the identity of an informant once a substantial preliminary showing of falsity has been made...".

Second, permitting the State to hide the identity of the affiant at the time of the ex parte hearing to obtain the search warrant could only serve an illegitimate purpose, i.e., it could allow the State to carry out searches without the protection of the Fourth Amendment. By requiring revelation of the affiant only after the search, the Court would negate the full effect of the exclusionary rule. So long as nothing was found, the State would not be coerced into revealing the name of the affiant and, therefore, not coerced into obtaining a search warrant only after probable cause.

As before, the State may argue that the purpose served is to protect the safety of the

affiant. However, such is not a legitimate purpose since the affiant's identity must be revealed at a later date anyway. The only protection afforded would come if nothing were found. Arguing for this protection amounts to saying, "the informants that are wrong should be protected even though the informants that are right are not protected". Or otherwise stated, "we should not tell the innocent victim of an illegal search the same thing we are required to tell the individual caught possessing contraband". Contrary to the above statements, the purpose of the exclusionary rule was to help protect the innocent from unreasonable searches by requiring that all search warrants can issue only "...upon probable cause, supported by Oath or affirmation...".

Third, allowing the State to hide the identity of the affiant at the time of the ex parte hearing to obtain the search warrant, would serve to

defeat the very reasons cited in Franks for allowing the post-search hearing.

The opinion in Franks sets out three basic reasons for utilizing the exclusionary rule if the defendant is not given an opportunity to challenge the veracity of the affiant in connection with his Fourth Amendment rights. First, the Court wanted to avoid the possibility of "intentional falsification" which "could denude the probable cause requirement of all real meaning". Secondly, the Court wanted to provide more protection than is furnished by the ex parte hearing at which the warrant is granted without an adversary proceeding and subject to the need for urgency. Thirdly, the Court wanted to provide an alternative sanction to perjury prosecutions, administrative discipline, contempt, and civil suits. Underlying the use of the exclusionary rule in this case, as

all cases, is the coercive power of potential dismissal.

Allowing the State to withhold the name of the affiant until forced to reveal said name would be contrary to the above cited reasons. First, "intentional falsification" might be promoted rather than decreased. If the affiant's identity were not revealed to the magistrate, the affiant's reliability would never be damaged and the affiant would be free to continue such conduct undetected. Secondly, the magistrate would have less of an opportunity to decide in a meaningful way whether the affiant was reliable. Thirdly, not only would the aggrieved party be unable to question the veracity of this affiant, but he would have no alternative sanctions available. He would not be able to bring a civil suit, for he would not know whether the affiant knew that the information

supplied was false. Further, if the affiant was a police officer who acted knowing such information was false, the police officer could be saved from any administrative discipline by his anonymity.

Supplementing the Franks opinion, other statutory and case law is of special importance for this issue. First, it is defendant's contention that the Fourth Amendment prohibits "John Doe" warrants directly by requiring that "...no Warrants...issue, but upon probable cause, supported by Oath or affirmation...". In support of this argument, the defendant would cite United States ex rel. Pugh v. Pate (1968), 401 F 2d 6. In Pugh v. Pate, the Seventh Circuit of the United States Court of Appeals interpreted the above requirement as precluding hiding the identity of the affiant or affirmant by use of a

false name. The Court reasoned that the use of a false name would have the same practical effect as the use of no name and would deprive the defendant of the benefit of the requirements of the Fourth Amendment which requirements "must be strictly adhered to" and which "guaranties are to be liberally construed to prevent impairment of the protection extended." In so holding, the court followed the reasoning set out in King v. US, 4 Cir 282 F 2d 398 (1960). Although King v. US involved a Federal prosecution and the Federal Rules of Criminal Procedure, the court in Pugh v. Pate, supra, specifically held that in a state prosecution:

> "the fourth amendment itself, in requiring an oath or affirmation, precludes hiding the identity of the affiant or affirmant by use of a false name." Pugh v. Pate (1968), 401 F 2d 6

Secondly, "John Doe" warrants are void because they restrict the magistrate's ability to judge the credibility of the affiant. In Aguilar v. United States, 378 U.S. 109, 84 S. Ct. 1509, 12 L.Ed. 2d 723 (1964), the Supreme Court held that a magistrate must have sufficient facts to enable him to judge independently the validity of an informant's conclusion and the credibility or reliability of the informant. Whenever a magistrate is presented with an affidavit in support of a search warrant made out by a person who does not identify himself, i.e., a "John Doe" affidavit, there is no way the magistrate can comply with the requirements of Aguilar v. United States. Without knowing who the affiant is, or having the affiant before him, he has no facts upon which to judge the affiant's credibility or reliability.

The above reasoning may have escaped

revelation in the past due to the confusion of the present situation with the situation referred to in Franks and within previous argument, i.e., the use of information supplied by an "unnamed informant" to a police officer. In that situation the Courts have previously ruled that the identity of the informant need not be revealed unless he is a witness necessary to the defense offered by the defendant. These two situations are drastically different, however. In the case of an "unnamed informant" a police officer or other individual is the affiant and includes in his affidavit facts sufficient to allow the magistrate to judge the credibility of the informant as well as the validity of the informant's conclusion. This information satisfies the requirements of Aguilar, supra. In the case of a "John Doe" affidavit, however, there is no information presented to the Court other than the statements of an unknown individual. As stated above, the

requirements of Aguilar are not satisfied by such a showing. Issuing warrants based solely on "John Doe" affidavits would, in fact, not only directly contradict Aguilar, but also allow the very evil the Court attempted to prevent in their decision. Consequently, hiding the name of the affiant can never be permitted. As pointed out above, the law enforcement authorities can protect the informant by using a second person as the affiant and by including in his affidavit sufficient facts to satisfy the requirements of Aguilar.

II

THE APPELLATE COURT SHOULD HAVE REMANDED THE INSTANT CASE TO GIVE THE DEFENDANT AN OPPORTUNITY TO CHALLENGE THE SEARCH WARRANT AS PROVIDED IN FRANKS V. DELAWARE.

Assuming this court does not specifically overrule People v. Stansberry (1971), 47 Ill. 2d

541, 268, N.E. 2d 431, cert. denied, 404 U.S. 873, 92 S. Ct. 121, 30 L.Ed. 2d 116, defendant would contend that the Appellate Court erred by not remanding the case to the trial court to afford the defendant an opportunity to challenge the search warrant as provided in Franks v. Delaware, 438 U.S. 154 (1978).

The Appellate Court's affirmance and refusal to remand was primarily based upon their determination that the one allegation of falsity presented by the defendant was not necessary to support a finding of probable cause. The Court maintains that the statement in the affidavit naming David Weller as an occupant of the apartment to be searched was not necessary to support the finding of probable cause even though the court admits it does add weight to the complaint. As pointed out above, however, it would be impossible for the defendant in the present case to satisfy the

requirements of Franks. Apparently, the allegations the Appellate Court believes to be "necessary" are the allegations that the affiant was present in the described premises and saw cannabis. How could the defendant claim the affiant was not on this premises if he didn't know who the affiant was? While the court does recognize that "other infirmities" might be excused because of the use of a fictitious name by the affiant, the court fails to recognize this basic problem posed by a "John Doe" affidavit.

Given an opportunity to reply to the above statement, the court might argue (as was implied during oral argument) that the defendant could have denied the allegations by saying that no one had observed cannabis in the premises during the time described in the affidavit. This reasoning is subject to the same flaw pointed out in defendant's argument above--it would sanction fishing expeditions. If something was found, the

search could never be challenged regardless of the constitutional requirement for a pre-search establishment of probable cause. If nothing was found, no charges would be brought, but the constitutional rights of those whose premises were searched would go unprotected, contrary to the Supreme Court's intention in Franks.

In addition to the fact that the defendant might not be capable of meeting the requirements of the Franks decision without a revelation of the name of the affiant, the Appellate Court has placed the defendant in a "Catch 22" situation. On the one hand, the court has ruled that he has adequately preserved the issue of his right to judge the credibility of the affiant; on the other hand, the court has ruled that he has not done an adequate job of doing so. Given an opportunity to amend his motion, the defendant might very likely be able to fulfill all the requirements of Franks--not merely correct the procedural

infirmities but also the main infirmity upon which the court bases its decision.

The Appellate Court explains their ruling as follows:

> "...no amendment to the motion could have made Weller's status as an occupant of the apartment a necessary allegation of the warrant complaint. Accordingly, we conclude that no violation of the doctrine of Franks occurred here..."

This reasoning obviously skips over the above possibility--that an amended motion could state that a necessary allegation was false.

The relief requested by reason of the foregoing arguments is as follows:

(1) As an alternative to the reversal requested by defendant, based upon the invalidity of "John Doe" warrants, the defendant requests a reversal based upon the refusal of the State to furnish the name of the "John Doe". Since the State

has wrongfully refused to furnish the name as defendant believes is required by Franks, the case should not be remanded for further proceedings in the trial court even if the court does not at this time rule "John Doe" warrants void.

(2) As an alternative to an outright reversal, based upon either invalidity of "John Doe" warrants or the refusal of the State to reveal the name of the affiant, the defendant requests that this cause be reversed and remanded to the trial court with directions that the State must reveal the name of the affiant and the defendant be given an opportunity to file an amended motion to suppress.

(3) As an alternative to all the above, defendant requests that the cause be reversed and remanded to the trial court and the defendant be given an opportunity to file an amended motion to suppress with directions that said

motion need not include nor any subsequent hearing require evidence that the false statements to be alleged were made knowingly and intentionally or with reckless disregard for the truth unless the State reveals the name of the affiant.

NECESSITY FOR CERTIORARI

I

The first Petition seeking a Writ of Certiorari cited the following two reasons:

(1) The conflicting decisions between the Illinois Supreme Court in People v. Stansberry (1971), 47 Ill. 2d 541, 268 N.E. 2d 431, cert. denied, 404 U.S. 873, 92 S. Ct. 121, 30 L.Ed. 2d 116, and the United States Fourth and Seventh Circuit Courts of Appeal in King v. US, 4 Cir 282 F 2d 398 (1960) and United States ex rel. Pugh v. Pate (1968), 401 F 2d 6. Contrary to the reasoning contained herein and the decicions in King and Pugh, the Supreme Court of Illinois does not preclude hiding the identity of the affiant or affirmant. These conflicting decisions have resulted in an inconsistent application of the United States Constitution and will continue to do so until consideration by this court. In pronouncing their decision in People v. Stansberry,

supra, the court specifically explained that they would not follow the reasoning of Pugh v. Pate, supra, but would only be bound by a ruling by this Court.

(2) The decision in Stone v. Powell, 96 S. Ct. 3037 (1976), precludes defendants from obtaining a vindication of his rights by Writ of Habeas Corpus. Stone v. Powell was decided subsequent to the denial of certiorari in People v. Stansberry, supra, and this and other defendants' ability to secure the rights guaranteed him by the United States Constitution now rests upon a reconsideration by this court of the issue in People v. Stansberry.

II

In addition to the above reasons, the defendant adds the following:

(1) The Appellate Court's reconsideration of this case has resulted in granting to the case of Franks v. Delaware, 438 U.S. 154 (1978), 98

S.Ct. 2674, 57 L.Ed. 2d 667, retroactive effect contrary to the prior decisions by this court on retroactive application of "new law".

This court has ruled on whether exclusionary rule cases are to be granted retroactive effect on many occasions, including Linkletter v. Walker, 381 U.S. 618 (1965), Stovall v. Denno, 388 U.S. 293, 18 L.Ed. 2d 1199, 87 S. Ct. 1967 (1967), Desist v. United States, 394 U.S. 244, 89 S. Ct. 1030, 22 L.Ed. 2d 248 (1969), and Williams v. United States, 401 U.S. 646, 91 S. Ct. 1148, 28 L.Ed. 2d 388 (1971). In the above cases, this court relied upon three considerations in determining whether a new ruling should be given retroactive effect: (a) the purpose to be served by the new standards (recognized as the most important), (b) the extent of the reliance by law enforcement authorities on the old standards, and (c) the effect on the administration of

justice of a retroactive application of the new standards.

The purpose served by any exclusionary rule is merely an attempt to protect constitutional rights of citizens by taking away any incentive law authorities may have to violate those rights. The obvious reason why such cases are given prospective application only is that excluding evidence already obtained by illegal means is not going to protect those individuals' rights that have been violated because the conduct intended to be discouraged has already transpired. One cannot coerce someone not to do something he has already done no matter what threats are used. The above reasoning was explained as follows in Desist, supra, quoting from Linkletter, supra:

> "...'all of the cases...requiring the exclusion of illegal evidence have been based on the necessity for an effective deterrent to illegal police action. ...We cannot say

> that this purpose would be advanced by making the rule retrospective. The misconduct of the police...has already occurred and will not be corrected by releasing the prisoners involved.' " Desist v. United States, 394 U.S. 244, 89 S. Ct. 1030, 22 L.Ed. 2d 248 (1969)

With regard to the case of Franks v. Delaware, supra, it is not necessary to detail to this court the great extent to which law enforcement authorities relied on the "old law", i.e., the rule prohibiting questioning the veracity of the affiant by way of a post-search hearing. It will suffice to point out that many states, including Delaware, had State Statutes limiting post-search hearings to challenges based upon the sufficiency of the affidavit on its face to present facts justifying a probable cause finding.

Little need also be said with regard to the effect on the administration of justice of retroactive application of Franks and all other

search and seizure exclusionary rule cases. In each of these cases there is no question as to the guilt of the accused. The only question is regarding the conduct of the law enforcement officials and whether such conduct should be discouraged by the coercive power of excluding evidence.

Also considered in determining whether a decision should be given retroactive application is the distinction between those rulings that are designed to "avoid unfairness at the trial by enhancing the reliability of the fact-finding process" and those designed to serve other independent interests, such as individual privacy. Decisions protecting one's right to privacy are, of course, in this second category and are not to be given retroactive effect. Granting certiorari would serve to correct this unjustified retroactivity.

(2) If this cause was initially remanded by this court to give the Appellate Court an opportunity to reconsider their position on the issue of "John Doe" search warrants, certiorari is obviously needed because the Appellate Court specifically refused to do so limiting their reconsideration to the unwarranted retroactive effect explained above. Furthermore, the retroactive effect given by the court was done without consideration of the logical implications of Franks as explained in each argument defendant sets forth above.

(3) Finally, the Appellate Court's interpretation of this court's mandate required the Appellate Court to hold this court reversed this cause based on an issue which even the Appellate Court admits was not raised on appeal (p. 4), i.e. the defendant's right to challenge the veracity of the affiant. This interpretation was made possible

through an extension of Rule 23(1)(c), 28 USCA, providing:

> "The statement of a question presented will be deemed to include every subsidiary question fairly comprised therein..."

Granting certiorari in the instant case would alleviate this potentially damaging interpretation of this rule.

WHEREFORE, Petitioner respectfully prays that this court grant petitioner's request for a Writ of Certiorari.

Respectfully submitted,

RONALD L. CARPEL
Attorney for Defendant-Petitioner

RONALD L. CARPEL
CARPEL & BOUREY, LTD.
132 South Water Street
P. O. Box 309
Decatur, Illinois 62523
Attorney for Petitioner-
Defendant
(217) 422-1970

STATE OF ILLINOIS

APPELLATE COURT

AT AN APPELLATE COURT, for the Fourth Judicial District of the State of Illinois, sitting at Springfield:

PRESENT

HONORABLE JOHN T. REARDON,
Presiding Judge
HONORABLE FREDERICK S. GREEN,
Judge
HONORABLE HAROLD F. TRAPP,
Judge

Attest: THOMAS R. APPLETON, Clerk

BE IT REMEMBERED, that to-wit: On the 4th day of January, A.D., 1979, there was filed in the office of the Clerk of the Court an opinion of said Court, in words and figures following:

Exhibit A

STATE OF ILLINOIS

APPELLATE COURT

FOURTH DISTRICT

General No. 13643 Agenda No. 78-486

THE PEOPLE OF THE STATE OF ILLINOIS,	)	
Plaintiff-Appellee	)	Appeal from Circuit Court Macon County
v.	)	No. 75-CF-595
WILLIAM R. HALL,	)	
Defendant-Appellant.	)	

MR. JUSTICE GREEN delivered the opinion of the court:

After a bench trial in the circuit court of Macon County at which he was found guilty of the offenses of unlawful possession of cannabis and a controlled substance, defendant William R. Hall was sentenced to 2 to 10 years' imprisonment for the latter offense. Upon appeal to this court, we affirmed (People v. Hall (1977), 45 Ill. App. 3d 469, 359 N.E.2d 1191). Subsequently the United States Supreme Court granted certiorari (Hall v. Illinois (1978), _____ U.S. _____, _____ S. Ct. _____, 57 L. Ed. 2d 1157), vacated the judgment of this court and remanded the case to this court for further consideration in light of the decision of that court in Franks v. Delaware (1978), 438 U. S. _____, 98 S. Ct. _____, 57 L. Ed. 2d 667. We now proceed to do so.

In Franks, the court held that in ruling on a motion to suppress evidence seized pursuant to a search warrant, a trial court is required, under the Fourth and Fourteenth Amendments, to permit the movant to present evidence to challenge the veracity of an affidavit upon which the search warrant was issued if (1) a substantial

preliminary showing is made that such affidavit contains a false statement made knowingly and intentionally or with reckless disregard for the truth and (2) the false statement was necessary to support the finding of probable cause made by the issuing judge.

In the case on appeal, two search warrants were issued on October 27, 1975, by an associate judge of the circuit court of Macon County based upon an affidavit signed with the name "John Doe." One warrant authorized the search of an apartment at 731 W. Wood St., Decatur, and the person of Mark Erbes. The other authorized the search of an apartment at 729 W. Wood St., Decatur, and the person of David Weller. Pursuant to the latter warrant, police officers searched the apartment at 729 W. Wood St. and seized a quantity of marijuana and a plastic bag containing 7 red capsules. The capsules were analyzed by a state agency and identified as containing ethclorvynol, a controlled substance.

The fruits of the search of the apartment at 729 West Wood St. were the substances which defendant was convicted of possessing. The portion of the "John Doe" affidavit relevant to the issuance of the warrant to search the apartment said:

> "Your complainant, John Doe, states that within the past seven (7) days he has been inside the apartment located at 729 West Wood Street, Decatur, Macon County, Illinois, on two different occassions (sic) and on each occassion (sic) he did observe a substance in the premises described to him by David Weller, occupant of said premises, as being cannabis, commonly known as marihauna (sic). This substance also appeared to your complainant as cannabis. Based on the foregoing, your complainant believes the above named

substance will be found in the above described premises."

Prior to trial defendant moved for disclosure of the true name of the "John Doe" affiant and to suppress all evidence obtained as a result of the search. Among the grounds cited in support of the motion to suppress as supplemented were contentions that (1) the affidavit failed to show probable cause and (2) the affidavit was based upon false information, i.e., that David Weller "resided" at 729 West Wood St., Decatur, when the "Police" had arrested David Weller on October 20, 1975, and knew that he resided at 47 Oakridge Drive, Decatur, Illinois. The trial judge refused to require disclosure of the true name of the affiant and ruled that he could not properly hear evidence to impeach the affidavit for the warrant.

In affirming on appeal, we ruled that the trial court did not err in refusing to require revelation of the true name of the affiant. We recognized that in United States ex rel. Pugh v. Pate (7th Cir. 1968), 401 F. 2d 6, cert. denied, 394 U. S. 999, 22 L. Ed. 2d 777, 89 S. Ct. 1590, the court had ruled that a warrant issued upon the affidavit signed with a fictitious name was invalid. However, we considered ourselves bound by the subsequent ruling to the contrary by the supreme court of this state in People v. Stansberry (1971), 47 Ill. 2d 541, 268 N.E. 2d 431, cert. denied, 404 U. S. 873, 30 L. Ed. 2d 116, 92 S. Ct. 121. The issue of the failure of the trial court to hear evidence as to the allegations of falsity in the affidavit was not raised on appeal. In People v. Bak (1970), 45 Ill. 2d 140, 258 N.E.2d 341, cert. denied, 400 U. S. 882, 27 L. Ed. 2d 121, 91 S. Ct. 117, the supreme court had ruled that an accused attacking the issuance of a search warrant may not attack the

truth of the matters stated on the face of the verified complaint upon which the warrant was issued.

Defendant's petition to the United States Supreme Court for writ of certiorari stated the questions for review to be whether the issuance of the search warrant violated the Fourth and Fourteenth Amendments and was rendered void because (1) the affidavit was signed by use of a fictitious name and (2) the complaint failed to "establish" probable cause. The Franks opinion which we are directed to consider on remand makes no mentioned of the propriety of "John Doe" complaints for warrants nor is it concerned with requirements for a showing of probable cause on the face of such a complaint. Rather it focuses upon the circumstances under which the trial court should hear evidence as to the veracity of the allegations of the affiant, a point raised here in the trial court but not cited as error on review to us nor directly tested in the questions for review in the petition for writ of certiorari.

Because of this unusual posture, defendant contends that the purpose of the remand must have been for us to consider the continued viability of the rule of Stansberry permitting the use of "John Doe" warrant complaints. He argues that if the affiant is not disclosed the defendant cannot make a sufficient investigation to determine whether the complaint contains perjury subjecting it to attack under the ruling in Franks.

However, we do not think that the United States Supreme Court having denied certiorari in both Stansberry and Pugh intended to overturn the Illinois rule of Stansberry in such an indirect manner. Rule 23(1) (c) of that court

(U. S. Sup. Ct. Rule 23 (1) (c), 28 U.S.C.A.) states that a petition for certiorari shall contain:

> "(c) The questions presented for review, expressed in the terms and circumstances of the case but without unnecessary detail. The statement of a question presented will be deemed to include every subsidiary question fairly comprised therein. Only the questions set forth in the petition or fairly comprised therein will be considered by the court."

The statement of facts in defendant's petition for writ of certiorari set forth that he had sought by motion to attack the complaint for warrant on the basis that it contained false allegations knowingly made. We conclude that the Supreme Court considered that issue to be a "subsidiary question fairly comprised" in defendant's question of whether probable cause was established. We, therefore, consider our mandate to be to consider whether under Franks an evidentiary hearing should have been conducted to determine whether knowingly, intentionally or recklessly false statements were made in the complaint on allegations necessary to support the finding of probable cause made by the issuing judge.

The Franks opinion stresses that criminal proceedings would be likely to become even more time consuming if the allegations of the affidavit for a search warrant could be easily challenged as to their truthfulness. For that reason, the court set forth strict requirements for such a challenge. One was that the false statement was necessary to support a finding of probable cause. Here, the allegedly false statement was that Weller was an "occupant" of the "apartment." The complaint stated that the affiant had been in the apartment on two occasions in the past 7 days and that the substance described to him by Weller as cannabis appeared to be that substance. In

the portion of the complaint relating to the request for a search warrant as to the other apartment and Mark Erbes, the affiant-complainant states that he had previously seen and smoked cannabis. The statement that Weller was an occupant added some weight to the complaint but we cannot see that it was in any way necessary to support the finding of probable cause made when the warrant was issued. The sufficiency of a verified complaint to support the previous issuance of a search warrant is a question of law. We rule that the allegation that Weller was an occupant of the apartment was unnecessary to support a finding of probable cause for the issuance of the warrant.

The amended motion to suppress had other infirmities. Franks stated that in order to entitle the defendant to present evidence contradicting the affidavits, the motion to suppress must be supported by sworn or reliable statements of witnesses setting forth the testimony that would support the defendant's allegations. This was not done here. Neither did the motion allege that the affiant was a police officer or that the affiant knew or should have known that Weller was not an occupant of the apartment. As Franks had not been decided at the time the motion to suppress was filed, defense counsel's failure to follow the requirements of that opinion can be excused and might be corrected if the case were remanded to the trial court and defendant given an opportunity there to file an amended motion. Likewise, the failure of the motion to tie in the knowledge of the affiant with that of the police department might be excused because of the use of a fictitious name by the affiant.

However, no amendment to the motion could have made Weller's status as an occupant of the apartment a necessary allegation of the warrant complaint. Accordingly, we conclude that no

violation of the doctrine of Franks occurred here and again affirm the judgments of the trial court.

Affirmed.

REARDON, P.J., and TRAPP, J., concur.

SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK
WASHINGTON, D.C. 20543

July 3, 1978

Ronald L. Carpel, Esq.
129 S. Water Street
Decatur, IL 62523

RE: William R. Hall
v. Illinois
No. 77-306

Dear Mr. Carpel:

The Court today entered the following order in the above-entitled case:

The petition for a writ of certiorari is granted. The judgment is vacated and the case is remanded to the Appellate Court of Illinois, Fourth District for further consideration in light of Franks v. Delaware, 438 U.S. (1978). Mr. Justice Stewart and Mr. Justice White would grant certiorari and set case for oral argument.

Exhibit B

Very truly yours,

MICHAEL RODAK, JR., Clerk

By /s/ Edward Faircloth

Assistant Clerk

STATE OF ILLINOIS

APPELLATE COURT

AT AN APPELLATE COURT, for the Fourth Judicial District of the State of Illinois, sitting at Springfield:

PRESENT

HONORABLE HAROLD F. TRAPP, Presiding Judge

HONORABLE FREDERICK S. GREEN, Judge

HONORABLE JOHN T. REARDON, Judge

Attest: ROBERT L. CONN, Clerk

BE IT REMEMBERED, that to-wit: On the 3rd day of February, A.D., 1977, there was filed in the office of the Clerk of the Court an opinion of said Court, in words and figures following:

Exhibit C

STATE OF ILLINOIS

APPELLATE COURT

FOURTH DISTRICT

General No. 13643	Agenda No. 77-25
THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee v. WILLIAM R. HALL, Defendant-Appellant.	Appeal from Circuit Court Macon County 75-CF-595

Mr. JUSTICE GREEN delivered the opinion of the Court:

After a bench trial upon the stipulated facts in the Circuit Court of Macon County, defendant William R. Hall was convicted of the offenses of unlawful possession of cannabis and unlawful possession of a controlled substance. A sentence of 2 to 10 years imprisonment was imposed on the conviction involving a controlled substance and the conviction for possession of cannabis was vacated. Defendant appeals. We affirm.

On October 27, 1975, John Doe (a fictitious name) appeared before an associate judge in the Circuit Court of Macon County and signed and swore to a complaint for search warrant. On the basis of that complaint, two search warrants were issued directing police to search two Decatur apartments and seize an unknown quantity of cannabis. Pursuant to one on those warrants, Decatur City Police searched defendant's apartment and seized a quantity of marijuana and a plastic bag containing seven red capsules. The capsules were analyzed by the Illinois Bureau of Identification and identified as ethclorvinyl, a controlled substance.

Defendant contends that the trial court erred in denying his motions (1) to suppress all evidence obtained as a result of the search and (2) to disclose the identity of the complainant for

the search warrant. The motions were heard at the same time and no evidence was presented upon either motion.

Defendant argues that at the hearing on the motion to suppress the seized evidence, the trial judge ruled that he could not countermand the determination made by the issuing Judge that the complaint showed probable cause. The report of proceedings upon that hearing makes clear that such was not the case. The trial judge heard arguments on the questions of the sufficiency of the complaint and concluded that probable cause was shown for the issuance of a warrant to search the premises where the contraband was seized.

We agree. The fictitious complainant stated that on two occasions in the past seven days, he had been in the apartment subsequently described in the search warrant and on each occasion observed a substance he believed to be marijuana. Defendant contends that because of the time lag between the complainant's observations and the presenting of the complaint, the complaint did not show probable cause to believe that the contraband was still in the apartment. He asks that we follow the decision in Ashley v. State (1967), 251 Ind. 359, 240 N.E. 2d 264, where an eight day delay between a complainant's observance of marijuana in a house and the issuance of a warrant to search the house was held to be too long. That court noted that marijuana was a substance that could easily be concealed or moved and would not be as likely to be kept in one place for as long a time as some other types of contraband. In People v. Montgomery (1963), 27 Ill.2d 404, 189 N.E. 2d 327, the Supreme Court ruled that probable cause was not negated by an eight day delay between the time a complainant purchased narcotics at an address and the issuance of a warrant to search those premises.

The opinion indicated that a much longer delay would not have prevented a finding of probable cause. In the instant case, although no sale took place, the marijuana was seen in the apartment on two occasions thus indicating more likelihood that the marijuana would continue to remain there for a substantial period. If, as would likely be the case, the complainant viewed the marijuana on separate days, the time lag would be less than seven days.

Defendant asks that we follow the decision in United States ex rel. Pugh v. Pate (1968), 401 F 2d 6, holding a warrant issued upon the basis of a complaint signed with a ficticious name to be invalid. He recognizes, however, that the courts of this state have not followed that ruling. (People v. Stansberry (1971), 47 Ill. 2d 541, 268 N.E. 2d 431, cert. denied, 404 U.S. 873, 92 S.Ct. 121, 30 L.Ed.2d 116; People v. Jackson (1976), 37 Ill. App. 3d 279, 345 N.E.2d 509.) We follow the Illinois precedent.

Defendant maintains that the seizure of the bag containing the seven red capsules was improper because this item was not described in the warrant as an item to be seized. At the hearing on the motion to suppress, the court had before it the complaint for the search warrant, the warrant and the inventory of things seized. No evidence was offered by either side to supplement these items. Section 114-12 (b) of the Code of Criminal Procedure (Ill. Rev. Stat. 1975, ch. 38, par. 114-12(b)) provides that the burden of proof on a motion to suppress evidence improperly seized rests upon the defendant. That provision, however, is interpreted in such a way as to be consistent with the holding in Vale v. Louisana (1969), 399 U.S. 30, 90 S.Ct. 1969, 26 L.Ed.2d 409. (People v. Normant (1975), 25 Ill. App.3d

536, 323 N.Ed.2d 553.) In Vale an accused upon coming outside of a dwelling house was arrested pursuant to an arrest warrant. A warrantless search of the house was then made by the arresting officers. The opinion emphasized that a warrantless search of a dwelling was permitted only upon exceptional circumstan ces and then stated that the burden rested upon the State to prove such exceptional circumstances. Here the warrant authorized the search of the entire apartment. Where, under such circumstances officers discover items which appear to be contraband, the items may be seized. (People v. Philyaw (1975), 34 Ill. App.3d 616, 339 N.E. 2d 461.) The ruling in Vale does not place upon the State the burden of proving the propriety of the instant seizure.

The court properly denied the motion to suppress.

Defendant's theory that the court's refusal to require disclosure of the name of the complainant was error is based upon an assumption that at the motion to suppress, he was entitled to introduce evidence that facts set forth in the complaint were inaccurate. Such is not the rule in this state. The determination as to whether probable cause existed for the issuance of the warrant must be based upon the allegations of the sworn complaint or affidavit incorporated therein. (People v. Bak (1970), 45 Ill.2d 140, 258 N.E.2d 34.) The complainant not having been shown to be a witness to the crimes charged, defendant was not entitled to disclosure (Jackson).

Finding no error to have occurred, we affirm.

AFFIRMED.

TRAPP, P.J. and REARDON, J. concur.

STATE OF ILLINOIS

OFFICE OF

CLERK OF THE SUPREME COURT

SPRINGFIELD

62706

CLELL L. WOODS
Clerk

Telephone
Area Code 217
782-2035

May 26, 1977

Mr. Ronald L. Carpel
Attorney at Law
129 S. Water Street
Decatur, Illinois 62523

No. 49409 - People State of Illinois, respondent,
vs. William R. Hall, petitioner.
Leave to appeal, Appellate Court,
Fourth District.

The Supreme Court today denied the petition for leave to appeal in the above entitled cause.

Very truly yours,

/s/ Clell L. Woods
Clerk of the Supreme Court

Exhibit D

ILLINOIS SUPREME COURT
CLELL L. WOODS, CLERK
SUPREME COURT BUILDING
SPRINGFIELD, ILL. 62706
(217) 782-2035

May 31, 1979

Mr. Alan D. Bourey
Attorney at Law
Carpel & Bourey, Ltd.
129 South Water St.
P. O. Box 309
Decatur, IL 62525

No. 51738 - People State of Illinois, respondent,
vs. William R. Hall, petitioner.
Leave to appeal, Appellate Court,
Fourth District.

The Supreme Court today denied the petition for leave to appeal in the above entitled cause.

Very truly yours,

/s/ Clell L. Woods
Clerk of the Supreme Court

Exhibit E

IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT

MACON COUNTY, ILLINOIS

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff,	)	
-vs-	)	No. 75-CF-595
WILLIAM HALL, Defendant.	)	

ORDER ON MOTIONS TO SUPPRESS.

This cause coming on to be heard on the 2nd day of December, 1975 on Defendant Hall's Motions heretofore filed and allotted for hearing this date.

Defendant Hall's first motion is to suppress or quash search warrant heretofore issued and served. Defendant Hall states that he should be given the name of the informant who testified before the judge issuing the warrant, but agrees that said informant was not a participant in the search

and seizure and would not be a witness in the trial of this defendant. The Defendant Hall further urges that this Court should overrule the finding of the issuing judge that there was probable cause for the issuance of the warrant. The Court rejects the defendant's contention and refuses to hear as though on appeal the findings of the judge issuing the warrant.

The second motions is to suppress the evidence siezed. It is without questions that the evidence was seized pursuant to the warrant and that the warrant covers the seizure as to subject matter. Defendant presents no evidence as to either motion and again attacks the sufficiency of the proceeding on which the warrant was issued.

With no evidence presented on either motion the Court finds that there is no merit in defendant's contentions and the motions are

denied.

Entered: December 2, 1975.

/s/ Rodney A. Scott
Judge

STATE OF ILLINOIS

APPELLATE COURT

FOURTH DISTRICT

SPRINGFIELD 62701

ROBERT L. CONN, Clerk
Telephone
Area Code 217
782-2586

June 9, 1977

Ronald L. Carpel
Attorney at Law
129 South Water Street
P. O. Box 209
Decatur, Illinois 62523

Patrick M. Walsh
State's Attorney
Macon County Building
Decatur, Illinois 62523

Re: People vs. Hall
General No. 13643

Gentlemen:

I have today entered an order of Judge James C. Craven in the above entitled cause, allowing the petition of the appellate for stay of mandate pending certiorari.

Very truly yours,

Exhibit G

/s/ Robert L. Conn

Clerk, Appellate Court
Fourth District

RLC:iv

STATE OF ILLINOIS
APPELLATE COURT
FOURTH DISTRICT
SPRINGFIELD 62701

THOMAS R. APPLETON, Clerk
Telephone
Area Code 217
782-2586

DATE: June 14, 1979

RE: People v. William
Richard Hall, Impl.
General No. 13643
Macon 75-CF-595

TO COUNSEL:

Appellant's petition to stay the mandate of the Appellate Court, received June 12, 1979 for filing, has been treated as an affidavit to stay the mandate. This affidavit has been filed today and the mandate of this court is stayed pending the filing of a petition for Writ of Certiorari in the United States Supreme Court.

THOMAS R. APPLETON, Clerk
Appellate Court
Fourth District

TRA:pd

TO: Ronald L. Carpel/Carpel & Bourey, counsel for appellant
Patrick M. Walsh/Richard A. Current, State's Attorney, Macon County

Exhibit H

Melbourne Noel, Chief, Criminal Appeals Division, Chicago Office of the Attorney General of Illinois